IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 2965 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAUKATHUSAIN CHANDA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 2965 of 1995

M/S THAKKAR ASSOC. for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 15/11/2003

ORAL JUDGEMENT

This Criminal Revision Application is filed under Section 397 read with Section 401 of the Criminal

Procedure Code, 1973 in order to challenge a judgement and conviction order recorded on 8-11-1995 by the learned Additional Sessions Judge, Panchmahal at Godhra in Sessions Case No.83/1993, under which the learned Judge convicted the present petitioner for an offence punishable under Section 332 of I.P.C. whereunder the petitioner was sentenced to suffer R.I. for six months. He was also directed to pay fine of Rs.1,000/- and in default of payment of fine he was required to undergo further R.I. for one month.

2) The facts of the case of the prosecution before the Trial Court may be briefly stated as follows :

3) On 18-4-1990 at about 4 p.m. the original informant-Shankarbhai Patel working as Assistant Conservator of Forest was on his duty in a mobile squad. The said informant was on patrolling duty along with his police guards supplied by the Forest Department to him. When he was on his way to the said patrolling duty, he had gone to village Bhagidol then he proceeded on the way to Godhra. After crossing a passage of about 1 k.m. he stopped at a place with a view to check the vehicles coming and going thereby. After about 15 minutes, he found one tractor No.GJU 6456 with a trailor coming from village Bhagidol and proceeding towards Godhra, woods of Mahuda trees and branches were found loaded in the trailor of the said tractor. Four labourers were also sitting in the said trailor. The informant and the police personnel stopped the said tractor. At that time, three of the four labourers had run away. The said tractor was followed by a motor cycle, two persons were travelling on the said motor cycle. When they saw that the tractor was stopped by the informant, they took a turn and ran away towards Godhra. An inquiry was made from the driver of the tractor and there it was learnt that the said two persons running away on the motor cycle were the persons being the owners or occupants of the tractor. A further inquiry was made with respect to their names and addresses from the driver and the said labourers but they did not supply the said information to the informant. Then, inquiry was made from the driver of the tractor about the pass or permit for carrying the said woods but the driver of the tractor did not possess the same and therefore, the driver was directed to take the said tractor to Vejalpur Forest Depot, through village Bhagidol. Two police constables were directed to sit by the side of the driver of the tractor (so that the driver may not run away) and the labourer was required to sit in the jeep car of the informant. The tractor was required to go ahead and was followed by the jeep-car of

the informant.

4) When they reached near the board of village Bhalania, a motor cycle was found going with three persons travelling thereon. It overtook the jeep car and the tractor and stopped ahead of the said tractor. One of them had an instrument like razor with him and another person had stick with him and the said three persons went towards the tractor. There had some scuffle with the police personnel and out of those three persons, the person having a stick had inflicted a stick blow on the rifle of police constable Bhurabhai on account of which the butt of the rifle was broken. Therefore, the informant came out of jeep car and went towards the tractor. At that time, the person having a razor like weapon committed an assault on him by means of the said razor and an injury was caused on the left side of the abdomen of the informant. The said person attempted to cause a second injury to the informant but the informant caught hold of his hand and, therefore, there was some injury on the right hand of the informant. In the meantime, two police constables, with a view to save the life of the informant, fired two gun shots in air and yet the said person did not leave the informant. The informant was thrown on the ground by those three persons. The informant raised shouts for police assistance. Therefore, police constable Abhesinh, with a view to save the life of the informant, fired a shot at the person, who possess the razor. Therefore, the informant was relieved and the person having a stick with him was found going towards the tractor. It was felt that the said person would run away with tractor and, therefore, the informant asked police constable Bhurabhai to fire shots at the tyre of the tractor. Therefore, police constable Bhurbhai fired shots at the tyre of the tractor and, therefore, there was a damage to the tyre of the tractor and there was some injury on the right hand forearm to the person carrying stick with him. However, those persons managed to run away on the motor cycle but the person holding razor had suffered gun shot wound and therefore, he was unable to get up. Inquiry was made with respect to his name and he was found to be the present petitioner. He was lifted from the said spot and was placed in the jeep car. In the meantime, the driver of the tractor and the labourers had also run away. The informant and the petitioner both were injured and therefore, the tractor was allowed to be there and the remaining person went to Vejalpur in the said jeep car of the informant.

5) The District Forest Officer was informed about

the aforesaid fact. He reached Vejalpur and referred the informant and the petitioner to the Hospital for their treatment. Thereafter, the informant filed F.I.R. before Godhra taluka Police Station for offences punishable under Section 394, 307, 332, 333, 427, 114 of I.P.C read with Section 135 of the Bombay Police Act. It was registered as Crime Register No.98/1990. Investigation was undertaken and at the end of the investigation, charge-sheet was submitted before the learned Judicial Magistrate First Class at Godhra. Since the aforesaid offence punishable under Section 307 I.P.C. was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions under Section 209 of the said Code. It was registered before the Sessions Court as Sessions Case No.83/1993. The petitioner was supplied with the copies of police investigation papers. Charge was framed and it was read over and explained to the petitioner. Evidence was recorded, at the end of the evidence, further statements of the petitioner and other accused persons were recorded under Section 313 of the said Code. After hearing arguments, the trial Court found the present petitioner guilty for an offence punishable under Section 332 of I.P.C. and acquitted the petitioner for remaining offences. The trial Court also acquitted the co-accused persons from all offences.

6) The trial Court heard the petitioner on the point of quantum of punishment and thereafter, inflicted the aforesaid punishment on the petitioner. Feeling aggrieved by the said judgement and conviction order of the trial Court, the petitioner has preferred this Revision Application before this Court. It has been mainly contended here that there was no material before the trial Court to prove that the present petitioner had caused injuries to the informant and the trial Court has committed serious error in holding the petitioner guilty. That, therefore, the judgement and conviction order are illegal and deserve to be set aside. The petitioner has, therefore, prayed to set aside the said judgement and conviction order of the trial Court.

7) On receiving the revision application, rule was issued and in response to the service of notice of rule, Mr.S.S.Patel, learned APP has appeared on behalf of the State. I have heard the learned advocates for the parties and have perused the papers. It may be incidentally noted that this is a Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. Incidentally, it would be relevant to consider the provision of Sub-section (2) of

Section 374 of the Code of Criminal Procedure, 1973, which may be reproduced for ready reference as under :

374. Appeals from convictions.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

Then Section 376 of the said Code makes a provision which prohibits filing of an appeal in petty cases, clause (b) to Section 376 of the said Code may be reproduced for ready reference as follows :

376. No appeal in petty cases- Notwithstanding anything contained in Section 374, there shall be no appeal by a convicted person in any of the following cases, namely:

(b) Where a Court of Sessions or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine ;

8) In the present case, we find that the petitioner herein has been convicted for an offence punishable under Section 332 of I.P.C. and has been sentenced to suffer R.I. for six months. The petitioner has also been directed to pay fine of Rs.1,000/- and in default of payment of fine, the petitioner has been directed to undergo further R.I. for one month.

9) A query was raised at the beginning of the argument as to whether, in view of provisions made in Sub-section 2 of Section 374 and Clause-B to Section 376 of the said Code, an appeal would lie and as to whether the petitioner would consider propriety of applying for conversion of Criminal Revision Application into a Criminal Appeal, in view of the provisions made under Sub-section 5 of Section 401 of the said Code but there was no response from the petitioners' side.

10) As stated above, as per the case of the prosecution a tractor was carrying various forest goods illegally and without any pass or permit. Therefore, it was stopped and it was being carried to the forest depot. In the meantime, the petitioner and two other persons intercepted the tractor and there was a scuffle between the petitioner and two other persons with the police personnel including the informant who is a forest officer. Then it has also come on record that the informant was assaulted by the petitioner by means of razor and actually injury was caused on the left hand side of the abdomen of the informant by the petitioner. In order to prove the said event the prosecution has examined following witnesses.

P.W. 1 Mukeshbhai Bhailalbhai Sheth Exh.17 Hostile

P.W. 2 Vipulbhai Ramanlal Patel Exh.18 Hostile

P.W. 3 Satishkumar Shantilal Exh.19 Hostile

P.W.4 Balwantsinh Ranchhodbhai Exh.20 Hostile

P.W.5 Dr.Vali (who has examined Exh.21
the petitioner)

P.W.6 Driver - Rajeshkumar Jaswantlal Soni Exh.23

P.W.7 Police constable-Abhesinh Dhirabhai Exh.24

P.W.8 Informant-Shankarbhai Dwarkadas Exh.26

P.W.9 Forest Officer, Mr.Bhatt Exh.27

P.W.10 Constable-Bhurabhai Hirabhai Exh.28

P.W.11 Dr.Vali (who has examined Exh.29
the informant-Saukat Abdullah)

P.W.12 Police Officer- Himmatsinh Chavda Exh.32

P.W.13 R.F.O.-Pravinsinh Solanki Exh.34

P.W.14 Police Inspector- Ramswaroopsinh Puwar Exh.35

11) At the outset, it may be stated that the petitioner has filed this Criminal Revision Application and not an appeal and therefore, the Court is required to consider the legality of the conviction and sentence. In Criminal Revision Application, this Court is not required

to appreciate the evidence and particularly, the factual merits of the case. This Court will be required to consider, if there is any illegality committed by the trial Court in appreciation of evidence. This Court may also consider if any inadmissible evidence has been made admissible and whether the Trial Court has recorded it's finding on the said inadmissible evidence. This Court may also look into the issue, if some opportunity was required to be given to the petitioner and if the trial Court had failed in providing the said opportunity to the petitioner. This Court may also look into the matter as to the legality and propriety of the sentence imposed by the trial court. In case the sentence imposed is too harsh, considering the gravity of the offence, then also this Court may be in a position to interfere with the quantum of punishment. If the above things are not present then it would be very difficult for this Court to interfere with the judgement and conviction order of the trial Court in exercise of revisional jurisdiction. It is required to be considered that the revisional jurisdiction is different from an appellate jurisdiction. Reappreciation of evidence can be undertaken in an appeal, which is not permissible in a revision application. In revision, the Court can go into the evidence only in order to satisfy itself, if the appreciation is illegal. Even if two views are possible, it would not be open for this Court to substitute its view for the view recorded by the trial court. The trial court had an occasion to see the demeanor of witnesses tendering evidence from the witness box and, therefore, the assessment of the trial court would be on the strength of the said impression carried by the said Court from the said demeanor.

12) Keeping in mind the above legal position, it would be necessary to refer to the evidence on record. Initially, four witnesses have not supported the case of the prosecution and, therefore, it is not necessary to look into their evidence. We can straightway go to the evidence of informant, P.W.8, Shankarbhai Dwarkadas, Exh.26, who has given evidence to the effect that the tractor followed by a trailor was carrying forest goods illegally without pass or permit on 18-4-1990 when the informant was on his official duty as an officer in the Forest Department. He was actually on patrolling duty and it was his function to see that forest goods are not illegally carried or taken away from the forest by any person. The informant has deposed that the driver of the tractor carrying the said forest goods was stopped and inquiry was made but he did not possess any pass or permit to carry forest goods. Then he asked the driver

to take the said tractor to Vejalpur via Bhagidol. Accordingly, the tractor was made to turn around and it was taken towards Vejalpur via Bhagidol. The driver of the said tractor was allowed to drive the tractor and two police constables were required to sit by the side of the driver of the tractor in order to see that the driver did not run away with the tractor and the goods. The informant has, thereafter stated, during the course of his evidence, that the tractor was stopped by three persons. Two of them ran away and one was made to sit in the jeep car of the forest department. When the tractor and the jeep car went ahead, a motor cycle had come there and three persons were travelling on the said motor cycle. The motor cycle overtook the tractor and it stopped in front of the said tractor. One of the persons going on the said motor cycle committed assault on the police constable sitting by the side of the driver of the tractor. The informant has clearly deposed that the person, who was holding a razor was the present petitioner and he was identified accordingly in the court by him. However, the informant was unable to identify the person holding stick with him in the court. Therefore, the trial Court has convicted only the present petitioner. The evidence of this informant clearly shows that he had identified the person holding a razor in the court also. Then with respect to the actual incident, the informant has deposed that the person holding razor had approached him and asked him, as to why the tractor was stopped, thereafter, that person assaulted him by means of the said instrument held by him. That person, i.e. the present petitioner, inflicted a razor blow on the abdomen of the informant and even the person holding stick had also approached him and the informant was thrown on the floor and the person holding razor sat on him and therefore, the informant raised shouts for help. Police constable, Abhesing, tried to move the person with razor in his hand from the body of the informant but he did not succeed and, therefore, the informant and the police constable both apprehended that the said person may inflict another blow and therefore, Abhesinh, with a view to save the informant, fired a shot at the petitioner. Therefore, the petitioner fell down and thereafter, other person ran away and the petitioner was taken in the jeep to Vejalpur. The petitioner as well as the informant both were admitted in the hospital and treatment was given to them.

13) The learned advocate for the petitioner has heavily argued that there is no evidence about the identity of the petitioner. It is also his argument that

test identification parade has not been held and the identification before the Court for the first time is a weak piece of evidence and it could not be relied upon by the trial court, and in absence of any evidence, with respect to the identification of the petitioner, the trial court could not have convicted the petitioner for a serious offence like one punishable under Section 332 of I.P.C.

14) The informant in his evidence at Exh.26 has clearly identified the petitioner before the trial court. The petitioner and the informant were together in a jeep car for a long time, when they went upto Vejalpur, where both were admitted in one hospital. Both of them took treatment from one and the same doctor and even at the time of filing of F.I.R. the petitioner was not away from the informant. The petitioner was arrested from the Hospital itself. Therefore, it can be said that virtually the petitioner was in custody or under supervision of the informant right from the beginning for over six hours. Therefore, when the person causing injury has been handed over to the police by the injured person then the question of holding test identification parade looses it's importance. Here the petitioner was never away from the informant in a span for over six hours between 4 p.m. and 11 p.m.

15) Therefore, from the above evidence, I am of the view that the prosecution had placed sufficient material before the trial Court in order to prove that the petitioner was the person who had caused razor injury to the informant. It is required to be noted that the petitioner had suffered injuries and his injuries have been proved by the doctor also. Dr.Vali has been examined by the prosecution twice. At one stage, he has given evidence with respect to the injury of co-accused and at another juncture he has given evidence with respect to the injury sustained by the informant. Now, so far as the informant's injury is concerned, it is amply supported by the evidence of Dr.Vali at Exh.29, who has clearly deposed that the petitioner was examined by him on 18-4-1990 at about 6:25 p.m. and that he had given case history that the informant has sustained injury by means of razor. The informant was found to have injuries on his abdomen, and it was an incised wound. He had also an injury on his right palm and left thumb. These are the injuries mentioned by him in his F.I.R. as well as in his oral evidence. Therefore, the fact of injuries sustained by the informant has been amply supported by the evidence of Dr.Vali Exh.27. The said piece of evidence of Dr.Vali has been supported by

injury certificate issued and produced by him at Exh.30.

16) This doctor had also examined the petitioner. He has deposed that at about 6:15 p.m. on 18-4-1990, he had examined the petitioner and had found gun shot wound on the left thigh. The fact of injury sustained by him has been supported by certificate at Exh.22. He had stated that injuries shown on the person of the petitioner could be there by receiving gun shot wound. Then we find the evidence of Rajendrakumar Soni at Exh.23, he was the driver of the jeep. He has supported the case of the prosecution, with respect to the stoppage of tractor carrying forest woods. He has also supported the case of the prosecution with respect to the incident in question. However, he was unable to identify the present petitioner in the Court but the fact of injuries sustained by the petitioner has been amply supported by him. Even the police constable-Abhesinh Exh.24 has also given evidence with respect to the stoppage of tractor carrying forest goods illegally. He has also given evidence that one person having a razor had inflicted a razor injury on the abdomen of the informant, that, then he fell on the floor and when he raised shouts, the witness and his colleague Bhurabhai also fired in air. However, the person sitting on the informant did not go away and he was in a process of inflicting another razor blow and, therefore, he fired a shot at the said person holding a razor. However, he was unable to identify the petitioner in the court because of lapse of time. He, however, says that he was Saukat Hussain as per the information received by him subsequently. So far as remaining facts are concerned, his evidence is totally in consonance with the evidence of other witnesses including the evidence of the informant. His evidence showing razor with the petitioner, injury by the petitioner to the informant and the injury sustained by the petitioner clearly points out to the petitioner and petitioner alone.

17) Then there is evidence of Mr.Bhatt, Exh.27. He is also an officer in the Forest Department. On receiving the information, he had gone to Vejalpur. He has clearly deposed that the informant had conveyed him about the entire episode that he had injury on his abdomen and the injury was bleeding and even the petitioner was having injury which was also bleeding. Therefore, he took both of them to Godhra Civil Hospital where the petitioner filed F.I.R. Therefore, to a great extent his evidence lends corroboration to the evidence of the informant.

18) Bhurabhai Hirabhai, Exh.28, is also an armed

constable, who had accompanied the informant at relevant point of time. He has also given evidence about the entire episode and he has further deposed before the trial Court that the informant had received a razor injury on his abdomen and the person causing injury had also sustained gun shot wound and, therefore, the informant as well as the person receiving gun shot injury both were carried in the same jeep car to Vejalpur and then they were carried to the Civil Hospital at Godhra. It is further deposed by him that the person, who had sustained injury was a person, who had injury on his thigh. Therefore, there is complete evidence on record to show that the petitioner had caused injury to the informant.

19) Now, one thing is clear that the informant was an officer in the Forest Department and as such, he was a Government officer and therefore, he was a public servant. It is also a fact that the informant was on duty to protect forest and the forest goods. It is a fact that the tractor carrying forest woods and goods illegally, was stopped and with a view to take away the tractor and the goods contained therein assault was committed on a public servant by means of a razor by the petitioner. Therefore, it is clear that the petitioner has caused injury to the informant when he was on his duty as a public servant. In that view of the matter, an offence punishable under Section 332 of I.P.C. has been clearly made out. The learned advocate for the petitioner has tried to show that there was another accused named Saukat Abdullah and he was also injured, but it is clear from the evidence of Dr.Vali at Exh.29 in para 4, that Saukat Abdullah was examined on 19-4-1990 and not on the date of the incident. Moreover, the said injured had sustained injury on his left hand, whereas the person who had inflicted razor blow on the informant was the person, who had sustained injuries on his thigh. Therefore, it cannot be said that the person who had caused injury to the informant could be Saukat Abdullah and not the present petitioner.

20) It is also a matter of record that there is consistent evidence that the petitioner had committed assault on the informant and the petitioner, who had caused razor injury on the abdomen of the informant was the person, who was taken in the jeep car first to Vejalpur and then to the Civil Hospital, Godhra. This means that the petitioner was caught from the spot and thereafter, he was taken to Vejalpur in government vehicle and then to Civil Hospital, Godhra in a matador brought by the aforesaid forest officer. In that view of

the matter, when the petitioner himself had sustained thigh injury and when in injured condition he was taken to the hospital and when he was handed over to the police, then it cannot be said that it is a case of doubtful identity of the petitioner.

21) As said above, this is a revision application and, therefore, reappreciation of evidence is not permissible. However, looking to the nature of offence and the manner in which it has been committed and looking to the arguments advanced by the learned advocate for the petitioner about the doubtful identity of the petitioner, I have gone through the evidence on record and have reappreciated the evidence, as if the revision was a criminal appeal. On such reappreciation, I am of the view that the prosecution has satisfactorily proved the case beyond any reasonable doubt against the petitioner. Even if it is treated to be a criminal appeal, the result would not be different. An attempt was made to argue that though the offence took place at about 4 p.m. the F.I.R. was filed at about 11:30 p.m. Now, it is a matter of record that the incident took place after 4 p.m. and the place was away from Godhra and injured person and the petitioner both were first taken to Vejalpur and from there they were taken to the Civil Hospital at Godhra and the treatment was given at about 6:30 p.m. This shows that both the persons were in the Hospital and when the accused was taken to the hospital with the complainant then in that case, little delay in filing F.I.R. would not be treated to be fatal on prosecution case. It is required to be considered that the informant had sustained injury by means of razor on his abdomen. Therefore, it was the first duty of the forest officer to see that the informant was provided with appropriate medical treatment with a view to save the life of the informant and this was a matter of prime importance. Thereafter, F.I.R. may be filed at a latter stage, when the informant may have improved his health. Therefore, little delay here or there cannot be considered adversely against the prosecution. In fact, when the petitioner was in hospital right from 6:30 p.m. It cannot be said that there was delay in filing F.I.R. It is more so when the petitioner himself was in the hospital with the informant. It has been argued that there are some contradictions between the evidence of witnesses. It is a fact that the incident took place in April 1990 and the evidence was recorded in 1995, therefore, when there was a lapse of about five years, there would be some contradictory version coming on record. Moreover, it is true that except the informant other witnesses have not supported the prosecution with

respect to the identity of the petitioner. It is true that the witnesses have said that they could not identify the petitioner on account of lapse of time but at the same time, the petitioner had been identified by the informant, as the informant had taken the petitioner with him in his own jeep car, first to Vejalpur and then to the Civil hospital at Godhra and therefrom, he was arrested. Therefore, when the petitioner was taken by the informant with him and was handed over to the police then the question of doubtful identity would not arise at all. There is some discrepancy on the point of stitches taken on the abdomen of the informant. Even if there is some contradiction here or there, it would not materially affect the case of the prosecution. Whether or not stitches were taken was not a fact of very much importance for the purpose of proving the case of the prosecution and therefore, even if there is some contradiction on that aspect, it cannot be treated to be fatal on the case of the prosecution. It has also been argued that it has not been proved as to who was the owner of the tractor and the owner of the goods carried in the tractor. This was not a relevant factor for proving the guilt of the petitioner. It is not material to prove as to whether the petitioner was interested in the tractor or in the goods carried in the tractor. The fact remains that it is proved on record that the petitioner had caused razor injury on the abdomen of the informant and, therefore, it is proved that voluntarily injury was caused by the petitioner to a public servant while he was on his duty as such public servant.

22) It has also been contended that the petitioner himself had sustained injury and it is also a gun shot injury which has been established through the prosecution witnesses and they have clearly deposed that the petitioner had inflicted one razor injury on the abdomen of the informant and he was in the process of causing second injury and, therefore, with a view to save the life of the informant a gun shot was fired at the petitioner and therefore, he was injured. Injury on the person of the petitioner proves the presence participation of the petitioner at the spot and it also proves his involvement in the commission of offence in question.

23) It has been lastly argued by the learned advocate for the petitioner that the incident took place in 1990 and so many years have gone thereafter, therefore, the petitioner may be dealt with under the provision of the Probation of Offender's Act, 1958. It is required to be considered that the informant was a forest officer on

duty at the relevant point of time and a tractor was carrying forest goods illegally, it was stopped and was being carried to the forest depot. In the meantime, it was intercepted and assault was committed on the police personnel and then assault was also committed by means of weapon on the person of the informant, a public servant while on duty. If such persons are allowed to go home without severe punishment, then people would be encouraged to commit and repeat forest offences and on the other hand, the forest officers would be demoralised, if such offences are taken very lightly. Therefore, mere delay in disposal of a criminal revision by this Court cannot be a ground for reducing the punishment or for showing leniency or for extending benefit of probation. In G.Gopinath Vs. Krishnan Ayyappan & Ors., 9 Supreme Court Cases, 430, it has been laid down that there was an inordinate delay in reversing acquittal ordered by the trial Court. The High Court convicted the accused for offence punishable under Section 498 A of I.P.C. but directed the trial Court to reconsider the question of sentence. In the present case, we find that the trial court, itself, has convicted the petitioner and the petitioner has filed this Revision, therefore, there is no question of applying the principle of the said matter to the facts of the case on hand.

24) In State of Karnataka Vs. Mudappa reported in 1999, Supreme Court Cases (Criminal) 1046, it was a case of an offence punishable under Section 304, Part II, I.P.C. and it was observed that release of offender on probation was not barred and hence the High Court had granted benefit of probation and the Hon'ble the Supreme Court did not interfere with the said discretionary power exercised by the High Court. Again it was a matter on its own fact and the facts of the case before us are quite different as enumerated hereinabove. Therefore, on the facts of the case on hand, I am of the view that this is not a fit case for extending benefit of probation to the petitioner.

25) In State of Haryana Vs. Prem Chand reported in 1997 Supreme Court Cases (Criminal) 1176, again benefit of probation was extended there, as the accused was less than 21 years of age and the prosecutrix was found to be of the age of 16 years. Again the said benefit was extended on the facts of the case and not on principle.

26) In Hari Kishan & State of Haryana Vs. Sukhbir Singh & Ors. reported in AIR 1988 Supreme Court 2127, it was held that the occurrence was an outcome of a sudden quarrel and there was no previous enmity between the

parties. In the present case, we find that forest property was illegally stolen and transported and it was intercepted and with a view to take away the said property, the public officer was attacked by means of razor. Considering this fact, it would not be proper for this Court to extend the benefit of probation to the petitioner.

27) In State of Gujarat Vs. V.A.Chauhan reported in AIR 1983 Supreme Court 359, the Hon'ble Supreme Court found that release of accused on probation in respect of offences punishable under Sections 409, 467, 471 I.P.C. read with Section 5(1) (c) and (2) of the Prevention of Corruption Act would not be proper.

28) In Keshav Sitaram Sali Vs. State of Maharashtra reported in AIR 1983 Supreme Court 291, the case was of an employee of Railway and he was alleged to have abetted commission of offence of theft of coal worth Rs.8/- from railway goods wagon, now that fact was quite different. The accused was alleged to have abetted commission of offence and the property involved was worth Rs.8/-.

29) In Roshanali Burhanali Syed Vs. State of Gujarat, reported in AIR 1982 Supreme Court 784 (1) the accused was above the age of 21 years and yet it was found that he could be extended benefit of probation under Section 4(1) of the Probation of Offenders' Act, 1958. The said matter was decided on the facts of its own case.

30) In Ved Prakash Vs. State of Haryana reported in AIR 1981 Supreme Court 643, the accused was below the age of 21 years. In that case, under Section 4 of the said Act, it was obligatory on the part of the Court to consider the extension of benefit of probation. The petitioner before this Court was not below the age of 21 years at the time when the offence was committed. Therefore, the said decision will not apply to the facts of the case on hand.

31) In Narayansingh Nathusingh Vs. Natvarlal Harilal Thakkar & Anr. reported in (1981) 4 Supreme Court Cases 507, the sentence of three months R.I. was reduced to 29 days already undergone and unexpired sentence was converted into a fine of Rs.1500/- in addition to the fine of Rs.5,00/- already imposed. Again the said matter was decided on the facts of the said case. Therefore, it is not a matter of principle, and, therefore, it cannot apply to the facts of the case on hand. Here the case have been enumerated in details and, therefore, having

regard to the facts and circumstances of the case and looking to the nature of the offence and the manner in which the offence was committed I am of the view that this is not a fit case for extending the benefit of probation.

32) In Hansa Vs. State of Punjab reported in AIR 1977 Supreme Court 1991 the offender was convicted for an offence punishable under Section 325 of I.P.C. the Hon'ble Supreme Court found that having regard to the facts and circumstances of the case, nature of the offence and character of the offender, it was expedient to release the offender on probation of good conduct for period of one year. Here the position is reverse. Here having regard to the facts and circumstances of the case, the nature of the offence and the manner in which it has been committed, it cannot be said that the petitioner deserves the benefit of probation.

33) As stated above, if serious view is not taken in such matters, then on one hand offences of this nature are likely to increase and on the other hand, forest officers would be demoralised and they will not perform their duty sincerely, if the offences are viewed very lightly and leniently. Taking overall view of the matter, it is clear that there is ample evidence on record to show that the petitioner has inflicted razor blow on the abdomen on the informant and the identity of the petitioner has been established by taking the petitioner first to Vejalpur and then to the civil hospital and then to the police station. The petitioner was continuously in the company of the informant and therefore, there is no question of disputed or doubtful identity of the offender. Once the identity has been established, then it is further proved on record by all witnesses that he had committed the injury in question by means of razor to the informant, who was a public servant discharging his official duty. This means that the petitioner has voluntarily caused injury to a public servant while he was discharging his official function and thereby the petitioner is proved to have committed an offence punishable under Section 332 of I.P.C.

34) Looking to the nature of the offence, and the manner in which it is committed, no leniency is required to be extended to the petitioner and there is no merits in the present revision and, therefore, it deserves to be dismissed. In fact, the sentence is erring on the side of leniency.

35) For the foregoing reasons, this Criminal Revision

Application is ordered to be dismissed. The judgement and conviction order recorded by the trial Court are confirmed. The petitioner is on bail, his bail bonds are cancelled and the petitioner shall forthwith surrender to the custody of the trial Court. The trial Court shall immediately issue appropriate warrant against the petitioner and shall simultaneously issue notice to the surety to keep the petitioner present before the Court so that the petitioner can serve out the remaining period. Rule is discharged.

(D.P.Buch, J.)
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